IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8280 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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PARGI BABUBHAI NAVALBHAI - Petitioner(s)
Versus
SANGITABEN MINESHBHAI TAVIYAD & 1 - Respondent(s)

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Appearance :
MR RN SHAH for the Petitioner.
MR PRAKASH K JANI for Respondent no.1.
Mr. H.L.Jani, Assistant GOVERNMENT PLEADER for Respondent no.2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 07/09/2006

ORAL ORDER

The present petition has been preferred against the order dated 31st March, 2006 passed by the the Designated Authority under the provisions of The Gujarat Provisions for Disqualification of Members of Local Authorities for Defection Act, 1986,(for short, hereinafter referred to as “The Act of 1986) in the application preferred by the present petitioner.

2. I have heard the learned counsel for the petitioner who has mainly submitted that there was a

whip given by Indian National Congress. However, the respondent no.1 has not voted as per the said whip and therefore, ought to be declared as disqualified in pursuance of the Act of 1986. This aspect of the matter has not been appreciated by the Authority. Hence, the impugned order deserves to be quashed and set aside.

3. I have also heard the learned advocate for respondent no.1 who has submitted that the application preferred by the petitioner was not tenable. Moreover, there is also violation of the provision of the Act,1986 and Rules made thereunder. There is no locus standi with the petitioner to prefer such a petition under the Act of 1986, more so, in view of Rule 6(3) of The Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules, 1987 (for short, hereinafter referred to as “The Rules of 1987”) and there is also a breach of Rule 6(4) of the Rules of 1987 because there was no verification of the petition as well of Annexures and therefore, the conclusion arrived at by the respondent no. 2 authority in dismissing the

application preferred by the petitioner was absolutely true and correct and in consonance with the provisions of the Act of 1986 and the Rules of 1987 and two decisions rendered by this Court reported in **1996(3) GCD, 792 (Gujarat) and 2003(O)GLHEL 200572** which are annexed with the memo of the affidavit-in-reply filed by respondent no. 2 and in consonance with the **judgment dated 26th June, 2004 delivered by this Court in Special Civil Application no. 10723 of 2002,** whereby it has been held that the requirement under Rule 6(3)(4) and (5) of the Rules of 1987 are mandatory and therefore, the impugned order passed by the respondent no.2 authority may not be interfered with by this Court.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to take any deviation from the conclusion arrived at by the Designated Authority under the provisions of Gujarat Provisions for Disqualification of Members of Local Authorities for Defection Act, 1986 vide impugned order dated 31st March, 2006 for the following facts and reasons:

(i) It appears from the facts of the case that original applicant-petitioner was not the sitting member of the Taluka Panchayat and therefore, there is a violation of the Rules of 1986 for preferring an application against elected member.

(ii) The present petitioner (original applicant) has not verified the application and the Annexures thereto.

(iii) The present petitioner (original applicant) has also not presented a copy of whip given by the competent authority of the concerned party. Instruction given is not a whip.

(iv) As per the judgments reported in **1996(3) GCD 792 and 2003(O) GLHEL 200572** (which are with affidavit-in-reply) and the **judgment delivered by this Court dated 26th June, 2004 in Special Civil Application no.10723 of 2002,** the

decision taken by the Designated Authority under the Act of 1986 is absolutely true and correct.

5. As a cumulative effect of all the aforesaid facts and circumstances and the judicial pronouncements, the impugned order dated 31st March, 2006 passed by the Designated Authority under the Act of 1986 is true and correct. There is no error committed by the authority, much less, an error apparent on the face of the record. There is therefore, no substance in this petition. Hence, the same is hereby dismissed. Rule is discharged with no order as to costs.

(D.N.Patel,J)

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